

§ 636.14

within the period provided by NRCS under paragraph (a) of this section, NRCS may terminate the agreement and require the participant to refund all or part of any of the funds issued under that cost-share agreement, plus interest, and may assess liquidated damages as indicated in the cost-share agreement appendix, as well as require the participant to forfeit all rights to any future payment under the agreement.

(c) If NRCS terminates a cost-share agreement due to breach of contract, the participant will forfeit all rights to future payments under the agreement, may be required to pay liquidated damages in an amount determined by the State Conservationist in accordance with the terms of the agreement, and will refund all or part of the payments received, plus interest. Participants violating WHIP cost-share agreements may be determined ineligible for future NRCS-administered conservation program funding.

§ 636.14 Misrepresentation and scheme or device.

(a) A participant who is determined to have erroneously represented any fact affecting a program determination made in accordance with this part, will not be entitled to cost-share agreement payments and must refund to NRCS all payments and pay liquidated damages, plus interest, as determined by NRCS.

(b) A participant will refund to NRCS all payments, plus interest, as determined by NRCS, with respect to all NRCS cost-share agreements to which they are a party if they are determined to have knowingly:

(1) Adopted any scheme or device that tends to defeat the purpose of the program;

(2) Made any fraudulent representation; or

(3) Misrepresented any fact affecting a program determination.

(c) Other NRCS cost-share agreements where this person is a participant may be terminated.

§ 636.15 Offsets and assignments.

(a) Except as provided in paragraph (b) of this section, any payment or portion thereof to any person or legal entity will be made without regard to

7 CFR Ch. VI (1-1-13 Edition)

questions of title under State law and without regard to any claim or lien against the land, or proceeds thereof, in favor of the owner or any other creditor except agencies of the United States Government. The regulations governing offsets and withholdings found at 7 CFR part 1403 of this title will be applicable to cost-share agreement payments.

(b) WHIP participants may assign any payments in accordance with 7 CFR part 1404.

§ 636.16 Appeals.

(a) Any participant may obtain reconsideration and review of determinations affecting participation in this program in accordance with 7 CFR parts 11 and 614, except as provided in paragraph (b) of this section.

(b) In accordance with the provisions of the Department of Agriculture Reorganization Act of 1994, Public Law 103-354 (7 U.S.C. 6901), the following decisions are not appealable:

(1) Payment rates, payment limits, and cost-share percentages;

(2) The designation of approved fish and wildlife priority areas, habitats, or activities;

(3) NRCS program funding decisions;

(4) Eligible conservation activities; and

(5) Other matters of general applicability.

(c) Before a participant may seek judicial review of any action taken under this part, the participant must exhaust all administrative appeal procedures set forth in paragraph (a) of this section.

§ 636.17 Compliance with regulatory measures.

(a) Participants who implement the WHIP plan of operations will be responsible for obtaining the authorities, rights, easements, permits, or other approvals necessary for the implementation, operation, and maintenance of the conservation activities in keeping with applicable laws and regulations. The requirement for the participant to obtain necessary permits is included in the terms and conditions of the contract appendix.

(b) Participants will be responsible for compliance with all laws and for all

Natural Resources Conservation Service, USDA

§ 636.21

effects or actions resulting from the participants' performance under the cost-share agreement.

§ 636.18 Technical services provided by qualified personnel not affiliated with USDA.

(a) NRCS may use the services of qualified TSPs in performing its responsibilities for technical assistance.

(b) Participants may use technical services from qualified personnel of other Federal, State, and local agencies, Indian tribes, or individuals who are certified as TSPs by NRCS.

(c) Technical services provided by qualified personnel not affiliated with USDA may include, but are not limited to, conservation planning; conservation practice survey, layout, design, installation, and certification; and related technical services as defined in 7 CFR part 652.

(d) NRCS retains approval authority over certification of work done by non-NRCS personnel for the purpose of approving WHIP payments.

§ 636.19 Access to operating unit.

As a condition of program participation, any authorized NRCS representative will have the right to enter an agricultural operation or tract for the purposes of determining eligibility and for ascertaining the accuracy of any representations related to cost-share agreements and performance. Access will include the right to provide technical assistance; determine eligibility; inspect any work undertaken under the cost-share agreements, including the WHIP plan of operations and O&M agreement; and collect information necessary to evaluate the habitat development performance specified in the cost-share agreements. The NRCS representative will make a reasonable effort to contact the participant prior to the exercising of this provision.

§ 636.20 Equitable relief.

(a) If a participant relied upon the advice or action of any authorized NRCS representative and did not know, or have reason to know, that the ad-

vice or action was improper or erroneous, NRCS may grant relief in accordance with 7 CFR part 635. Where a participant believes that detrimental reliance on the advice or action of a NRCS representative resulted in an ineligibility or program violation, the participant may request equitable relief under 7 CFR 635.3. The financial or technical liability for any action by a participant that was taken based on the advice of a NRCS certified non-USDA TSP is the responsibility of the certified TSP and will not be assumed by NRCS when NRCS authorizes payment.

(b) If during the term of a WHIP cost-share agreement a participant has been found in violation of a provision of the cost-share agreement, the O&M agreement, or any document incorporated by reference through failure to fully comply with that provision, the participant may be eligible for equitable relief under 7 CFR 635.4.

§ 636.21 Environmental services credits for conservation improvements.

USDA recognizes that environmental benefits will be achieved by implementing conservation activities funded through WHIP, and that environmental credits may be gained as a result of implementing activities compatible with the purposes of a WHIP cost-share agreement. NRCS asserts no direct or indirect interest on any such credits. However, NRCS retains the authority to ensure that program purposes are met and the requirements for WHIP funded improvements are met and maintained consistent with §§ 636.8 and 636.9. Where activities required under an environmental credit agreement may affect land covered under a WHIP cost-share agreement, participants are highly encouraged to request a compatibility assessment from NRCS prior to entering into such agreements. The WHIP cost-share agreement may be modified, in accordance with policies outlined in § 636.10, provided the modification meets WHIP purposes and is in compliance with this part.